Telekom Research and Development Sdn Bhd v Ahmad Farid bin Abdul Rahman

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-170–03 OF 2020
HAS ZANAH MEHAT, CHE MOHD RUZIMA AND HASHIM HAMZAH JJCA
8 NOVEMBER 2021

Labour Law — Dismissal — Judicial review — Appeal against High Court's decision in allowing judicial review application by respondent — Appellant dismissed respondent from employment — Whether High Court erred when it interfered with findings of Industrial Court regarding respondent's misconduct — Whether respondent's misconduct constituted just cause or excuse for dismissal

This was an appeal by the appellant against the decision of the High Court ('the decision') where the High Court had allowed the respondent's application for judicial review and quashed the decision of the Industrial Court ('the award'). The respondent was the appellant's former employee. In March 2017, it was brought to the appellant's attention that the respondent had submitted a false 'dental' claim amounting to RM488 for his purchase of a pair of spectacles. The appellant then issued a show cause letter to the respondent. The respondent admitted to have mistakenly submitted the claim but denied of any wrongdoing or misconduct. The appellant eventually conducted a domestic inquiry against the respondent in which the respondent was found guilty. During the domestic inquiry, the respondent pleaded guilty and admitted to the charge. The respondent was eventually dismissed from employment. He later appealed against his dismissal but it was subsequently dismissed. Consequently, the respondent filed a representation for unfair dismissal against the appellant in the Industrial Court. The Industrial Court, in the award, decided that the appellant had successfully proven the charge against the respondent and that the respondent's dismissal was with just cause and excuse. The respondent then filed an application for judicial review in the High Court against the award. At the conclusion of the hearing, the award was quashed by the High Court and the matter was ordered to be remitted to the Industrial Court for the determination of backwages and compensation in lieu. Dissatisfied with the decision by the High Court, the appellant proceeded to file this appeal.

Held, allowing the appeal:

(1) The issues highlighted by the learned High Court judge had been sufficiently and substantially considered by the Industrial Court. The

Industrial Court's findings were clearly supported by its evaluation and assessment of available evidence. There was no reason to disturb the findings of the Industrial Court. The Industrial Court was correct when it focused on the conduct of the respondent to establish whether the respondent had committed the misconduct complained of. The learned High Court judge had unnecessarily stressed on the fact that the respondent's claim had been verified by his superior and subsequently processed for payment by the appellant's finance department. The issue of whether payment had been made to the respondent or whether the appellant had suffered any loss was irrelevant. Therefore, the High Court had committed an error when it disturbed the findings of the Industrial Court regarding the respondent's misconduct (see paras 24, 38, 42, 44 & 46).

(2) Evidence had shown based on the procedures involved in submitting the claim, the conduct of the respondent and the overall circumstances surrounding the respondent's submission of the false claim, that the claim was submitted deliberately by the respondent. This would, in turn, negate the respondent's defence of unawareness and genuine mistake. In such circumstances, there was a significant element of dishonesty in the respondent's misconduct which was in conflict with the trust and responsibility reposed in him by virtue of the fiduciary relationship between them as employer and employee. The serious repercussions of the respondent's misconduct far out weighted the length of the respondent's service, the respondent's clean record prior to the misconduct and the amount involved in the false claim. The appellant as the employer could not now be reasonably expected to continue the employment of the respondent, with the issue of the respondent's integrity and honesty being at the forefront of their mind. It was therefore justifiable for the appellant to dismiss the respondent. Submission of a false claim was a serious misconduct which would warrant a dismissal. The learned High Court judge had erred in holding that the respondent's dismissal was unwarranted (see paras 50–52, 54 & 55).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi ('keputusan') di mana Mahkamah Tinggi telah membenarkan permohonan responden untuk semakan kehakiman dan membatalkan keputusan Mahkamah Perusahaan ('awad'). Responden adalah bekas pekerja perayu. Pada Mac 2017, telah dibawa kepada perhatian perayu bahawa responden telah mengemukakan tuntutan 'pergigian' palsu berjumlah RM488 untuk pembelian sepasang cermin mata. Perayu kemudiannya mengeluarkan surat tunjuk sebab kepada responden. Responden mengaku tersilap mengemukakan tuntutan tetapi menafikan sebarang salah laku atau kesalahan. Perayu akhirnya menjalankan siasatan domestik terhadap responden di mana responden

didapati bersalah. Semasa siasatan domestik, responden mengaku bersalah dan mengaku terhadap pertuduhan itu. Responden akhirnya diberhentikan daripada pekerjaan. Dia kemudiannya merayu terhadap pemecatannya tetapi ia kemudiannya ditolak. Akibatnya, responden memfailkan representasi bagi pemecatan yang tidak adil terhadap perayu di Mahkamah Perusahaan. Mahkamah Perusahaan, dalam awad itu, memutuskan bahawa perayu telah berjaya membuktikan pertuduhan terhadap responden dan bahawa pemecatan responden adalah dengan sebab dan alasan yang adil. Responden kemudian memfailkan permohonan untuk semakan kehakiman di Mahkamah Tinggi terhadap awad itu. Pada akhir perbicaraan, awad itu telah dibatalkan oleh Mahkamah Tinggi dan perkara itu diperintahkan untuk dihantar ke Mahkamah Perusahaan untuk penentuan gaji dan pampasan sebagai ganti. Tidak berpuas hati dengan keputusan Mahkamah Tinggi, perayu memfailkan rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Isu-isu yang diketengahkan oleh hakim Mahkamah Tinggi yang bijaksana telah dipertimbangkan dengan secukupnya dan secara substansial oleh Mahkamah Perusahaan. Penemuan Mahkamah Perusahaan disokong dengan jelas oleh penilaian dan pertimbangan keterangan yang ada. Tiada sebab untuk mengganggu penemuan Mahkamah Perusahaan. Mahkamah Perusahaan adalah betul apabila ia memberi tumpuan kepada kelakuan responden untuk menentukan sama ada responden telah melakukan salah laku yang diadukan. Hakim Mahkamah Tinggi yang bijaksana telah tidak sepatutnya menekankan fakta bahawa tuntutan responden telah disahkan oleh pegawai atasannya dan kemudiannya diproses untuk pembayaran oleh jabatan kewangan perayu. Isu sama ada pembayaran telah dibuat kepada responden atau sama ada perayu mengalami sebarang kerugian adalah tidak relevan. Oleh itu, Mahkamah Tinggi telah melakukan kesilapan apabila mengganggu penemuan Mahkamah Perusahaan berhubung salah laku responden (lihat perenggan 24, 38, 42, 44 & 46).

(2) Keterangan telah menunjukkan berdasarkan prosedur yang terlibat dalam mengemukakan tuntutan, kelakuan responden dan keadaan keseluruhan yang mengelilingi penyerahan tuntutan palsu oleh responden, bahawa tuntutan itu dikemukakan secara sengaja oleh responden. Ini seterusnya akan menafikan pembelaan responden terhadap ketidaksedaran dan kesilapan nyata. Dalam keadaan sedemikian, terdapat unsur ketidakjujuran yang ketara dalam salah laku responden yang bercanggah dengan amanah dan tanggungjawab yang diberikan kepadanya berdasarkan hubungan fidusiari antara mereka sebagai majikan dan pekerja. Kesan serius daripada salah laku responden jauh sekali menimbang tempoh perkhidmatan responden, rekod bersih responden sebelum salah laku dan jumlah yang terlibat dalam tuntutan

palsu. Perayu sebagai majikan kini tidak boleh dijangka secara munasabah untuk meneruskan penggajian responden, dengan isu integriti dan kejujuran responden berada di hadapan fikiran mereka. Oleh itu adalah wajar bagi perayu untuk memecat responden. Penyerahan tuntutan palsu adalah salah laku serius yang memerlukan pemecatan. Hakim Mahkamah Tinggi yang bijaksana telah terkhilaf dalam berpendapat bahawa pemecatan responden adalah tidak wajar (lihat perenggan 50–52, 54 & 55).]

Cases referred to

Airspace Management Services Sdn Bhd v Col (B) Harbans Singh a/l Chingar Singh [2000] 3 MLJ 714, CA (folld)

Akira Sales & Services (M) Sdn Bhd v Nadiah Zee bt Abdullah and another appeal [2018] 2 MLJ 537; [2018] 2 CLJ 513, FC (refd)

Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, HL (refd)

Multimedia Development Corp Sdn Bhd v Clarence Augustine Tee Teck Huo [2018] 3 MLJ 447, CA (folld)

Petroliam Nasional Bhd v Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625, FC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)

Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)

Swedish Motor Assemblies Sdn Bhd v Hj Mohd Ison bin Baba [1998] 2 MLJ 372, CA (folld)

Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and another appeal [1995] 2 MLJ 753; [1995] 3 CLJ 344, FC (refd)

Legislation referred to

Industrial Relations Act 1967 s 20

Appeal from: Judicial Review No WA-25–404–09 of 2019 (High Court, Kuala Lumpur)

Raymond Low (Benedict Ngoh with him) (Shearn Delamore & Co) for the appellant.

Marwan bin Abdullah (Auzan Hasanuddin bin Sazali with him) (Mu'az Aiman Halem Auzan & Assoc) for respondent.

Hashim Hamzah JCA:

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the High Court which was delivered on 6 March 2020 ('the said decision') where the High Court had allowed the respondent's application for judicial review and quashed the decision of the Industrial Court in Award No 1642 of year 2019 dated 31 May 2019 ('the said award').

BRIEF FACTS

[2] The respondent was the appellant's former employee. He was first employed by the appellant on 16 November 2007 as an Assistant Researcher with a monthly salary of RM2,157. Prior to his dismissal, the respondent was a Manager in the appellant's Project Management Unit, Strategy and Business Performance Division with a monthly salary of RM7,271.

[3] In March 2017, it was brought to the appellant's attention that the respondent had submitted a false 'dental' claim amounting to RM488 for his purchase of a pair of spectacles from Alook Dpulze. The said claim was submitted by the respondent via on an online claim system called 'e-claim'.

[4] The appellant then issued a show cause letter dated 17 March 2017 regarding the above to the respondent. The respondent replied by way of a letter dated 17 March 2017 where he admitted to have mistakenly submitted the claim but denied of any wrongdoing or misconduct.

[5] The appellant eventually conducted a domestic inquiry against the respondent in which the respondent was found guilty of the following charge:

> Bahawa anda pada diantara 29 Disember 2016 telah mengemukakan tuntutan yang tidak benar bagi tuntutan 'dental' (Ref no: 2016–120036939–0201) sedangkan anda sedar bahawa tuntutan yang dikemukakan adalah bagi pembelian cermin mata berjumlah RM488.00.

[6] During the domestic inquiry, the respondent pleaded guilty and admitted to the charge. The respondent was eventually dismissed from employment. He later appealed against his dismissal but it was subsequently dismissed.

[7] Consequently, the respondent filed a representation for unfair dismissal against the appellant in the Industrial Court. The Industrial Court, in the said

A award, decided that the appellant had successfully proven the charge against the respondent and that the respondent's dismissal was with just cause and excuse.

B **[8]** The respondent then filed an application for judicial review in the High Court against the said award. At the conclusion of the hearing, the said award was quashed by the High Court and the matter was ordered to be remitted to the Industrial Court for the determination of backwages and compensation in lieu.

C **[9]** Dissatisfied with the said decision by the High Court, the appellant proceeded to file this appeal.

THE APPELLANT'S GROUNDS OF APPEAL

D **[10]** In short, the appellant's grounds of appeal are as follows:

(a) the High Court had erred in law and exceeded its jurisdiction when it interfered with the Industrial Court's finding of fact that the respondent had committed a serious misconduct;

E (b) the learned High Court judge erred in ruling that the respondent's did not intend to cheat the appellant;

(c) the learned High Court judge erred in ruling that the appellant's finance department was aware of the alleged mistake; and

F (d) the learned High Court judge erred in ruling that the punishment of dismissal was disproportionate.

THE LAW ON JUDICIAL REVIEW

G **[11]** It is trite that the decision of inferior tribunals may be reviewed for both process and substance on the grounds of 'illegality', 'irrationality', 'procedural impropriety' and 'proportionality'. Edgar Joseph Jr FCJ in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 (FC) with reference to the case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL) held as follows:

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> It is often said that judicial review is concerned not with the decision but the decision-making process (see, eg *Chief Constable of North Wales v Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.

I

But, Lord Diplock's other grounds for impugning a decision susceptible tojudicial review makes it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.

In this context it is useful to note how Lord Diplock defined the three grounds of review, to wit, (i) illegality; (ii) irrationality; and (iii) procedural impropriety. This is how he put it:

By 'illegality' as a ground for judicial review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of a dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223). It applies to *a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.

To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14, of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decisionmaker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as *'procedural impropriety' rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision*. This is because susceptibility tojudicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned *'proportionality' as a possible fourth ground of review which called for development*. (Emphasis added.)

[12] It is also trite that the findings of the Industrial Court are amenable to judicial review where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court have been arrived at by taking into consideration irrelevant matters or by failing to take into consideration relevant matters. This was expounded by Raus Sharif FCJ in *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629 (FC) where it was held as follows:

[15] We find that there is merit on the submission advanced by the learned counsel for the respondent. *Historically, judicial review was only concerned with the decision*

making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroads into this field of administrative law. Rama Chandran is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunals may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.

[16] The *Rama Chandran* decision has been regarded or interpreted as giving the reviewing court a license to review without restrain decisions for substance even when the said decision is based on finding of facts. *However, post Rama Chandran cases have applied some brakes to the courts' liberal approach* in *Rama Chandran*. The Federal Court in the case of *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 after affirming the *Rama Chandran* decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in *Rama Chandran* may be wholly inappropriate.

[17] The Federal Court, in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *Rama Chandran* approach. Further, it was held that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationality, even where the reviewing judge might not have come to the same conclusion.

[18] The Court of Appeal has in a number of cases held that where finding of facts by the Industrial Court are based on the credibility of witnesses, those findings should not be reviewed (see *William Jacks & Co (M) Sdn Bhd v S Balasingam* [2000] 7 MLJ 1; [1997] 3 CLJ 235, *National Union of Plantations Workers v Kumpulan Jerai Sdn Bhd, Rengam* [2000] 2 MLJ 144; [2000] 1 CLJ 681, *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600; [2001] 1 CLJ 9, *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong & Another Appeal* [2001] 4 MLJ 97; [2001] 3 CLJ 9). However, there are exceptions to this restrictive principle where:

(a) reliance upon an erroneous factual conclusion may itself offend against the principle of legality and rationality, or

(b) there is no evidence to support the conclusion reached.

(See *Swedish Motor Assemblies Sdn Bhd v Hj Md Ison Baba* [1998] 2 MLJ 372; [1998] 3 CLJ 288).

[19] *It is clear from the above authorities that the scope and ambit of Rama Chandran had been clearly explained and clarified. Decided cases cited above have also clearly established that where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amendable to judicial review*. (Emphasis added.)

[13] See also *Akira Sales & Services (M) Sdn Bhd v Nadiah Zee bt Abdullah and another appeal* [2018] 2 MLJ 537; [2018] 2 CLJ 513 (FC). A

[14] It is also trite that the function of the Industrial Court in dealing with a reference under s 20 of the Industrial Relations Act 1967 (Act 177) is only to determine whether the misconduct complained of by the employer as the ground of dismissal is in fact committed by the workman, and if so, whether such ground constitutes just cause or excuse for the dismissal. B

[15] We refer to exact words of Mohd Azmi bin Hj Kamaruddin FCJ who, in delivering the judgment of the Federal Court in *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd And another appeal* [1995] 2 MLJ 753; [1995] 3 CLJ 344 held as follows: C

> On the authorities, we were of the view that *the main and only function of the Industrial Court in dealing with a reference under s 20 of the Act* (unless otherwise lawfully provided by the terms of the reference) *is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal*. In our opinion, there was no jurisdiction by the Industrial Court to change the scope of reference by substituting its own reason. In this particular case, it was clear from the award of the Industrial Court, that the reason given by Hong Leong for the dismissal of Wong was based on the irregularities in the sale of the two motor car wrecks which the Industrial Court held to be a gross dereliction of Wong's duties. After being satisfied that Wong did commit the acts complained of, the Industrial Court ought to have gone further and determined whether such gross dereliction of duties constituted just cause or excuse for the dismissal. Instead of determining the second issue, the Industrial Court would appear to have changed the scope of the reference by inquiring almost entirely on the question of whether there was a failure to hold a domestic inquiry, a reason not relied upon by the employer for the dismissal, and a matter quite outside the terms of reference by the Minister. D E F G
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> Thus, under s 20, it is incumbent for the Industrial Court to inquire into the issue of just cause or excuse on the merits, save perhaps when the reference itself by the Minister was challenged and held to be bad in law so as to deprive the court of threshold jurisdiction. In this particular case, there was no challenge on the threshold jurisdiction and as such, the failure to discharge its function under s 20 reference was a jurisdictional error meriting interference by certiorari. (Emphasis added.) H

[16] Bearing in mind the trite position of the law above, we now turn to consider the issues raised by the parties in the present appeal. I

FINDINGS

The respondent's misconduct

[17] First and foremost, it is trite that the High Court in a judicial review application shall not interfere with the finding of the Industrial Court unless if it can be successfully shown that the finding is based on the ground of illegality or is plainly irrational.

[18] Steve Shim CJ (Sabah and Sarawak) in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625 (FC) held:

> Quite clearly, the Industrial Court had found the respondent to be impatient. *A reviewing judge might not have come to the same conclusion from the established facts but he should exercise restraint. He should not disturb such finding unless it could be shown to be based on grounds of illegality ot plainly irrational*. In this case, the Court of Appeal had made the following observation:
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> > Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little doubt that a reasonable tribunal, properly directing itself on the facts and the law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. This is indeed the conclusion of the learned judge. We are fully in agreement with him.
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> *With respect, I am unable to agree with that observation. In my view, there is no illegality in the finding of the Industrial Court, nor can it be said to be plainly irrational in all the circumstances. On the contrary, a closer perusal of the award shows that there has been a proper appreciation of the facts and law by the Industrial Court*. It has also taken into account the competing interests of the workman and his employer. I am therefore unable to accept the observation made by the High Court in these terms:
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> > From the facts of this case, I do not think that the Applicant had acted impatiently. On this issue, I cannot agree with the view of the Industrial Court in stating that 'He was just impatient'. As stated in the Award the Applicant returned to report to Petronas around September 1986 and only left Petronas in December 1988, a period of more than two years. How long can a person of his qualification and experience be asked to wait before given a proper job? From these facts it is more appropriate to conclude that after waiting more than two years, the Applicant had been more than patient ... (Emphasis added.)

[19] In the present appeal, the appellant submitted that the High Court had erred in law and had exceeded its jurisdiction when it interfered with the Industrial Court's findings of fact that the respondent had committed a serious misconduct by submitting a false claim.

[20] The charge preferred against the respondent was as follows:

> Bahawa anda pada di antara 29 Disember 2016 telah mengemukakan tuntutan yang tidak benar bagi tuntutan 'dental' (Ref no: 2016–120036939–0201) sedangkan and a sedar bahawa tuntutan yang dikemukakan adalah bagi pembelian cermin mata berjumlah RM488.

[21] In essence, the respondent was alleged to have submitted a false 'dental' claim which he knew that the claim was actually for his purchase of spectacles amounting to RM488.

[22] In summary, the Industrial Court decided based on the available evidence that the appellant had successfully proven the charge against the respondent and that the respondent's dismissal was with just cause and excuse.

[23] When the matter went before the High Court for review, the learned High Court judge found as follows:

> [23] Seterusnya, penelitian kepada keseluruhan keterangan yang ada di hadapan Mahkamah Perusahaan, *fakta-fakta berikut adalah material*:
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> (i) *Pemohon dari awal* melalui surat jawapan kepada surat tunjuk sebab oleh responden pertama *menyatakan bahawa pemohon melakukan kesilapan* apabila membuat tuntutan pembelian cermin mata tersebut *apabila membuat andaian perkara tersebut boleh dilakukan*. Pemohon juga dalam surat yang sama *memohon maaf dan bersetuju mengembalikan semula wang* RM488.00 yang telah dimasukkan ke dalam akaun pemohon;
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> (ii) *Tuntutan pemohon telah divarifikasi (verified) oleh ketuanya* iaitu Fakrul Ariffin bin Mohd Afif dan kelulusan oleh pemohon hanya merupakan suatu formaliti sahaja;
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> (iii) *Pada dokumen tuntutan tersebut juga dinyatakan dengan jelas resit pembelian cermin mata dari Alook Dpulze dengan catatan 'New Optical Lens'*. Dokumen tuntutan tersebut dilampirkan di sini untuk kemudahan rujukan;
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> (iv) *Bahagian kewangan responden pertama mempunyai pengetahuan mengenai tuntutan pembelian cermin mata* oleh pemohon *tetapi tidak menolak tuntutan* yang dibuat malahan membuat bayaran tuntutan tersebut ke dalam akaun pemohon; dan
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> (v) *Pemohon mengaku membuat kesilapan* berhubung tuntutan pembelian cermin mata tersebut *tetapi tidak mengaku* bahawa beliau telah melakukan *perbuatan salahlaku*.
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> [24] Fakta-fakta material yang dinyatakan ini gagal diambil pertimbangan oleh Mahkamah Perusahaan yang menyebabkan keputusan yang dibuat adalah tidak munasabah dan khilaf.
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> [25] Sekiranya fakta material ini diberi pertimbangan oleh Mahkamah Perusahaan, jelas menunjukkan bahawa pemohon tidak berniat menipu responden atau membuat sebarang tuntutan palsu. (Emphasis added.)

[24] We have gone through the appeal records and with utmost respect, we disagree with the learned High Court judge. On the contrary, we found that

A the issues highlighted by the learned High Court judge above have been sufficiently and substantially considered by the Industrial Court.

[25] Firstly, with regard to the issue of the respondent's unawareness or mistake in submitting the claim, the Industrial Court had duly considered the following evidence.

[26] The Industrial Court had considered the respondent's own admission during cross-examination that he was fully aware that he was not eligible to claim for the spectacles. Be that as it may, the respondent still proceeded to claim the same under the 'dental' claim. The relevant part of the Industrial Court's findings in the said award can be seen below:

> [78] *At trial the claimant confirmed that he is not entitled to receive benefits of spectacles* and was cross examined as follows:
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> S3: Sebagai Eksekutif anda hanya layak buat tuntutan faedah pekerjaan di bawah terma pekerjaan?
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> J: Betul.
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> S4: Rujuk muka surat 38–41 COB-2 khususnya muka surat 41 di bawah perenggan 6 March 1(b) anda sebagai Eksekutif tidak berhak kepada pembelanjaan untuk cermin mata?
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> J: Betul.
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> S5: Jadi selama 11 tahun tuntutan optical tidak boleh dibuat?
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> J: Betul.
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> [79] Based on the above evidence, *the claimant was aware of his eligibility under the terms and conditions of his contract of employment. Thus, the claimant was aware that he is not eligible to claim for the spectacles*.
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> [80] The claimant *does not deny that he had submitted the claim via the e-claim portal under the heading of dental by using the tax invoice for the purchase of spectacles as supporting document. Further the claimant confirmed that he approved the claim*. (Emphasis added.)

[27] The respondent further admitted during cross-examination that there was actually no option for the respondent to select a claim for optical or spectacles expenses in the e-claim system. The respondent had also admitted to have filled in the details on the purchase of the spectacles into the 'dental' claim before submitting the same in the e-claim system.

[28] We pause here to note that based on the evidence, the step-by-step process pertaining to the 'dental' claim are as follows:

(a) the respondent will first need to enter his own personal login ID and password to enter his account;

(b) once entered, the appellant's system will welcome the respondent into the claims system;

(c) the respondent will then be shown the e-claim's main menu;

(d) the respondent will then have to hover the clicker on 'miscellaneous';

(e) once clicked, a drop down menu will enable the respondent to select several options, amongst which is 'dental';

(f) at the 'dental' claim page, the respondent will need to enter details of the treatment and confirm whether the dental treatment was for 'extraction' or 'filling';

(g) prior to submission, the respondent will need to click the following disclaimer:

> I hereby certify that my claim is in compliance with the company's term and condition on PERJANJIAN BERSAMA, MANUAL SUMBER MANUSIA and MANUAL PROSES PERNIAGAAN. If deemed false, disciplinary action can be imposed on me. Original and certified receipt! supporting documents is to be submitted to my Superior for verification and approval as well as to be properly kept for audit purposes.
>
> By clicking on the 'Agree' button below, I understand and agree to the above related terms and conditions'; and

(h) the respondent will then need to tick the box in the disclaimer, and click 'agree' to submit the application.

[29] It is pertinent to note that the respondent was cross-examined on the above procedures where he admitted to the following:

> S33: Rujuk muka surat 23 COB-2, bila buat tuntutan didalam e-Claim *anda telah masukkan butir-butir ke dalam sistem dibawah tajuk Dental, Extraction & Fillings*?
>
> J: *Ya*.
>
> S38: Rujuk muka surat 1 COB-3, sahkan *anda buat akuan dan deklarasi didalam perenggan akhir*?
>
> J: Saya pasti saya ada klik. (Emphasis added.)

[30] The Industrial Court had taken into account all of the above evidence in its findings as can be seen in the said award as follows:

> [92] From the above claim, it can be seen that *the following details had been inputted into the system*:
>
> *(i) Item: Dental (ii) Clinic Name: ALook DPulze (iii) Filling: Yes (iv) Extraction:*

Yes (v) Remarks: New Optical Lense (vi)Amount: RM488.

[93] The claimant *admits that he made a claim for dental expenses via the company's e-claim portal. He confirmed that when he submitted the claim, he had filled in the above details*.

Q: Rujuk ms 23 COB-2, bila buat tuntutan e-claim anda masuk butir-butir ke dalam system dibawah tajuk Dental, Extraction & Filings?

A: Ya.

Q: Awak klik Dental dan 'yes' untuk Filing/Extraction dibawah Description menurut dokumen ini?

A: Ya.

Q: Semasa buat e-claim tiada bahagian di dalam system untuk Eksekutif buat tuntutan di bawah tajuk Optical?

A: Ya.

Q: Di dalam system e-claim tiada tajuk untuk Optical seharusnya tak boleh claim kaca mata?

A: Ya.

[95] Based on the above cross examination the claimant admitted that at the time of submitting his claim *there was no description of 'Optical' in his e-claim portal. He further admits inputting the details into the e-claim for dental expenses*. (Emphasis added.)

[31] In fact, the Industrial Court had also considered the respondent's conduct in placing the note 'Remark — New Optical Lens' in his claim which showed that in so doing, the respondent was fully aware that he was not entitled to submit the claim in the first place. This can be seen from the following passage in the said award:

[105] Hence, *based on the evidence the claimant was aware and knew at the material time that he was submitting a claim under the heading of dental as he had uploaded an image of the tax invoice* No AF 16CS-008767 from Alook Dpulze in the sum of RM488 to support his claim. In addition, *the claimant was well aware that the claim submitted was for purchase of spectacles as he inputted details under the column 'Remarks — New Optical Lense'*. (Emphasis added.)

[32] In the present appeal, the respondent, based his defence of unawareness and mistake on what has been informed to him by his colleague, who was not even called to give evidence during trial before the Industrial Court.

[33] The Industrial Court had carefully considered this issue and ultimately rejected the respondent's defence. An adverse inference was also invoked against the respondent for his failure to call the said colleague as a witness. It

can be seen in the said award as follows:

> [82] *However at trial the claimant contended that he was unaware and/or mistaken as to whether he was eligible to claim for the purchase of a pair of spectacles*.
>
> [83] The claimant during his examination in chief stated 'saya dimaklumkan oleh rakan-rakan sekerja saya bahawa saya boleh membuat tuntutan tersebut'.
>
> [84] *Thus the claimant claimed that he was informed by his colleagues that he was eligible to claim for spectacles. This was a bare allegation* made by the claimant as the claimant failed to bring his colleaques to testify on behalf. The failure by the claimant to call his colleaques as witness invites the invocation of s 114(g) of the Evidence Act 1950. (Emphasis added.)

[34] The fact that the respondent had consistently raised his defence even at the earliest possible opportunity was also considered by the Industrial Court as can be seen below:

> [87] *The claimant had confirmed during examination in chief that he knew he was not entitled to receive benefits of spectacles. Hence the issue of him being unaware or mistaken does not arise*.
>
> [88] In addition, *in his letter of appeal* dated 30 August 2017 at p 25 of COB1 the *claimant had stated 'sedangkan kesalahan saya ialah tersalah meletak dokumen sokongan untuk tuntutan kaca mata yang saya tidak layak tuntut dibawah kategori dental'*.
>
> [89] *Here again the claimant was well aware that he was ineligible to claim for a pair of spectacles. He cannot now claim that he was unaware or mistaken*. (Emphasis added.)

[35] The Industrial Court had also considered the fact that the respondent had only enquired with En Zainuddin (COW2) through Whatsapp on 29 December 2016 at 2.14pm which was some ten hours after he submitted his claim, as follows:

> [97] Based on the above evidence the claimant was well aware that he submitted the claim under dental. *The claimant's contention that he was unaware and it was a mistake when he submitted his claim using the invoice for spectacles under dental does not hold water. His conduct and the evidence shows otherwise*.
>
> [98] The *court takes note that the claimant had submitted his claim on 29 December 2016 at 3:53am which was several hours before he contacted COW2 via WhatsApp messaging*. (Emphasis added.)

[36] Evidence have also shown that the respondent did not follow up on the matter and went to approve his own claim after the claim has been verified by his superior some one month later.

[37] These were all the evidence carefully considered and evaluated by the Industrial Court before reaching its findings that:

(a) the respondent knew and was well aware that he was ineligible to claim for spectacles against the appellant;

(b) the respondent had knowingly submitted the claim via the e-claim portal under the 'dental' claim by using the tax invoice for the purchase of spectacles as a supporting document;

(c) the respondent knew and was well aware at the material time that he was submitting a 'dental' claim while the claim was in fact for the purchase of spectacles which the respondent knew that he was not entitled to claim;

(d) based on the overall conduct of the respondent, his defence that the he was unaware and it was a mistake when he submitted his claim does not hold water; and

(e) the respondent had committed the misconduct as per the charge preferred against him.

[38] We have gone through the appeal records and found that the Industrial Court's findings are clearly supported by its evaluation and assessment of available evidence. With utmost respect to the learned High Court judge, we see no reason to disturb the findings of the Industrial Court.

[39] We agree with what has been decided by Gopal Sri Ram JCA in delivering the judgment of the court in *Airspace Management Services Sdn Bhd v Col (B) Harbans Singh a/l Chingar Singh* [2000] 3 MLJ 714 (CA) that:

> It is clear from the reasoning of the learned judge that he treated the point in relation to the letter of appointment as being a matter open to review. With respect, we are unable to agree with the learned judge's approach. When the Industrial Court preferred the evidence of the appellant's witnesses about the terms on which the respondent was employed, there was in effect a complete rejection of the respondent's version of the events surrounding his appointment. *This is not a case where there was no evidence to support the finding made by the Industrial Court. It is a case where there was some evidence, subject of course to an assessment of its credibility, to support the finding of the Industrial Court. The learned judge was therefore bound to accept that finding.* (Emphasis added.)

[40] Secondly, the learned High Court judge decided that the Industrial Court had failed to consider the material evidence that the respondent's claim was verified by his superior and the appellant's finance department did notice the issue in the respondent's claim but proceeded with the payment nevertheless.

[41] At this juncture, we find it pertinent to reiterate the principle enunciated in *Wong Yuen Hock* that the focal issue for determination by the Industrial Court in the present case is whether the misconduct complained of by the appellant as the ground of dismissal is in fact committed by the respondent and if so, whether such ground constitutes just cause or excuse for his dismissal.

[42] As we have mentioned before, the essence of the charge against the respondent was that the respondent had knowingly submitted a false 'dental' claim amounting to RM488 when in actual fact the claim was for his purchase of spectacles. We found that the Industrial Court was correct when it focused on the conduct of the respondent to establish whether the respondent had committed the misconduct complained of.

[43] We agree with Gopal Sri Ram JCA in the case of *Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba* [1998] 2 MLJ 372 (CA) who in delivering the judgment of the court, held that:

> This piece of evidence cannot be ignored. With such evidence before the court, the findings of the learned chairman cannot be said to be reasonable and justified. *It is the duty of the Industrial Court to scrutinize the evidence before it with utmost care and to do that, it must at all times keep itself alert to the issues and attend to matters it is bound to consider*. (Emphasis added.)

[44] In our view, the learned High Court judge had unnecessarily stressed on the fact that the respondent's claim has been verified by his superior and subsequently processed for payment by the appellant's finance department. On the contrary, we hold that the issue of whether payment has been made to the respondent or whether the appellant has suffered any loss is irrelevant since the primary issue for consideration is whether the respondent had committed the misconduct complained of.

[45] On this point, we fully agree with Hasnah Hashim JCA (now FCJ) in *Multimedia Development Corp Sdn Bhd v Clarence Augustine Tee Teck Huo* [2018] 3 MLJ 447 (CA) who in delivering the judgment of the court, held that:

> [45] The applicant had instructed COW2 to replace the front page of the claim form and had relied on a fictitious email in support of his claim. *Whether or not payment was made is irrelevant to the applicant and as a result the first respondent did not suffer any actual loss. The uncontroverted evidence showed that the applicant had attempted to submit false claim*.
>
> [46] From our observation of the proceedings conducted in the Industrial Court we detected no impropriety in thejudicial making process. We are satisfied that the Industrial Court's chairman has considered and dealt with both these issues on their

substantial merits, based on the evidence before him. We are satisfied that the Industrial Court's chairman had taken into account the entire evidence, the facts and the circumstances at the material time and concluded the dismissal was with just cause. (Emphasis added.)

[46] Therefore, for the above reasons, we agree with .the appellant's submission that the High Court had committed an error when it disturbed the findings of the Industrial Court regarding the respondent's misconduct.

Whether the respondent's misconduct constitutes just cause or excuse for the dismissal and the grounds of proportionality

[47] The next issue is whether the respondent's misconduct in submitting the false claim constitutes a just cause or excuse for his dismissal and on a similar note, whether the said award may be reviewed on the grounds of proportionality by the High Court.

[48] According to the learned High Court judge, the respondent's dismissal did not commensurate with the respondent's misconduct due to the fact that:

(a) there was no dishonest intention on the part of the respondent to cheat the appellant;

(b) the respondent had admitted to and apologised for his mistake and he had also agreed to return the money that he received to the appellant;

(c) the respondent had served the appellant for nine years and nine months without any records of previous misconduct; and

(d) the sum involved was only a small amount.

[49] However, we do not agree with the learned High Court judge for the following reasons.

[50] Firstly, as correctly found by the Industrial Court, evidence have shown based on the procedures involved in submitting the claim, the conduct of the respondent and the overall circumstances surrounding the respondent's submission of the false claim, that the claim was submitted deliberately by the respondent. This would, in turn, negate the respondent's defence of unawareness and genuine mistake. We also agree with the appellant that in such circumstances, there was a significant element of dishonesty in the respondent's misconduct which was in conflict with the trust and responsibility reposed in him by virtue of the fiduciary relationship between them as employer and employee.

[51] We are further of the view that the serious repercussions of the respondent's misconduct far outweighs the length of the respondent's service, the respondent's clean record prior to the misconduct and the amount involved in the false claim. Even the respondent himself confirmed during cross-examination that filing a false claim is a serious misconduct as can be seen below:

> S6: Sahkan sebagai seorang pekerja memfailkan tuntutan yang tidak benar adalah satu kesalahan yang serius?
>
> J: Secara am ya.

[52] We are of the opinion that the appellant as the employer cannot now be reasonably expected to continue the employment of the respondent, with the issue of the respondent's integrity and honesty being at the forefront of their mind. There will no longer be any trust and confidence as between the appellant and the respondent should the respondent's employment be continued or reinstated. In our mind, it is therefore justifiable for the appellant to dismiss the respondent.

[53] Such was the consideration made by Industrial Court as can be seen in the said award worded in the following manner:

> [134] It is trite law that dishonesty is a serious misconduct which justifies the punishment of dismissal. In the instant case, the claimant was an Executive ie, a Manager at the Company. Therefore, it is reasonable for the Company to expect a high standard of care and conduct from the claimant. *It was reasonable for the Company to doubt the claimant's integrity and honesty hence losing trust and confidence in the claimant to discharge his duties as Manager with fidelity*. (Emphasis added.)

[54] Ultimately, we are of the view that submission of a false claim is a serious misconduct which would warrant a dismissal. We found that the earlier decision in *Multimedia Development Corp Sdn Bhd* supports our position above. In that case, the Court of Appeal upheld the decision of the Industrial Court and concluded that on the ground of submitting a false claim, the dismissal was with just cause and excuse.

[55] For reasons enumerated above, we find that the learned High Court judge had erred in holding that the respondent's dismissal was unwarranted.

CONCLUSION

[56] In a nutshell, for reasons enumerated above, we are satisfied that the Industrial Court had duly considered and dealt with the issues raised by all parties on their substantial merits based on all of the available evidence. We are satisfied that the Industrial Court had taken into account the entire evidence,

A and the facts and the circumstances at the material time in concluding that the dismissal was with just cause. On the same reasoning, we also agree with the appellant's submission that the High Court committed an error in quashing the said award.

B **[57]** We therefore allow this appeal and set aside the decision and the order of the High Court dated 6 March 2020. The Industrial Court award dated 31 May 2019 is hereby reinstated. We award costs to the appellant here and below for a sum of RM10,000 subject to allocatur.

C *Appeal allowed.*

Reported by Ahmad Ismail Illman Mohd Razali

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